

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KAREN MCBRIEN,

Plaintiff,

v.

CITY OF SAN MATEO, et al.,

Defendants.

No. C 11-5612 CW

ORDER REMANDING
CASE TO STATE
COURT AND DENYING
AS MOOT
APPLICATION TO
PROCEED IN FORMA
PAUPERIS

Plaintiff Karen McBrien originally filed this case in state court, removed it to federal court and applies to proceed in forma pauperis.

Plaintiff has improperly removed this case. The statutes governing removal, 28 U.S.C. § 1441 and 1446, indicate that a case is removable from state to federal court by the defendant or defendants in the action. There is no provision for removal of a case by a plaintiff because the plaintiff is the party who has decided to file the case in state court. See Esparza v. New Centry Mortg. Corp., 2011 WL 4499117, *1 (S.D. Cal.) (the removal statute does not permit a plaintiff to remove an action he chose to file in state court); In re Walker, 375 F.2d 678, 678 (9th Cir. 1967) (no right in favor of plaintiff, who has filed action in state court, to cause the removal of such action).

1 Because removal is improper, this case is remanded to state
2 court. Plaintiff's application to proceed in forma pauperis is
3 denied as moot.

4 IT IS SO ORDERED.

5
6 Dated: 1/6/2012


CLAUDIA WILKEN
United States District Judge

United States District Court
For the Northern District of California